

**DEPARTMENT OF REAL ESTATE**

PO Box 187000

Sacramento, CA 95818-7000

916 227-0770



March 5, 2009

Steven C. Vondran, Attorney  
620 Newport Center Drive Suite 1100  
Newport Beach, CA 92660

Re: Advance Fee Agreement

This letter will acknowledge our receipt of your advance fee agreement and accounting format you submitted on behalf of Back on Trak Inc on March 5, 2009.

The Department has no objection to the broker's use of the advance fee agreement and accounting format as submitted.

Please note that any changes to the agreement or the accounting format must be submitted to the Department for review before it is used. Any promotional materials that the broker may subsequently wish to use will require our prior review, as well. This includes press releases and announcements related to the broker's advance fee activities.

This letter does not constitute, nor may the broker make any representation that the Department of Real Estate has endorsed or approved any aspect of the broker's business activities.

Sincerely,

Sylvia I. Yrigollen  
Senior Deputy Commissioner  
Advance Fee Review Section



LOAN MODIFICATION SERVICE

**CLIENT ADVANCE FEE AGREEMENT**

**I. Introduction**

*Back on Trak Inc* ("Broker") is a Real Estate Company duly licensed in the State of California as referenced by Broker license # 01857664. This is an advance fee agreement to perform loan modification services.

**II. Advance Fee Requested**

This Agreement is by and between *Back on Trak Inc* (Broker), and \_\_\_\_\_, and \_\_\_\_\_ the Homeowner/Borrower(s) (hereinafter "*Principal*") beginning this \_\_\_\_ day of \_\_\_\_\_ month 200 \_\_\_, (Hereinafter "*Start Date*") in regard to the following loan(s):

**FIRST MORTGAGE**

Lender: \_\_\_\_\_ Loan#: \_\_\_\_\_

Lender Address: \_\_\_\_\_

**SECOND MORTGAGE**

Lender: \_\_\_\_\_ Loan#: \_\_\_\_\_

Lender Address: \_\_\_\_\_

**THIRD MORTGAGE**

Lender: \_\_\_\_\_ Loan#: \_\_\_\_\_

Lender Address: \_\_\_\_\_

The Property that is the subject of this agreement is located at: \_\_\_\_\_

\_\_\_\_\_  
Principal Initial \_\_\_\_\_ Principal Initial \_\_\_\_\_ 1

Upon execution of this agreement by both Broker and Principal, Broker shall insert the date of the execution of this agreement as the "*Start Date*" in the *Services to be Completed* section (Section IV) referenced below. Broker shall also insert the date upon which each service specified below will be completed. The Failure by broker to complete any action within the stated deadline provided means that broker is not entitled to earn the fee associated with that activity.

In performing valuable and specified loan modification services on your behalf, Broker seeks to collect, and hereby requests an up-front or advance fee in the amount of **\$3,500**. *These funds shall be due and payable to Broker on or before \_\_\_\_\_*. (no later than 5 days after the execution of this Agreement).

Payment shall be in the form of cash, check, money-order or any other form of payment acceptable to Broker. All sums of money collected hereunder shall be collected by Broker and broker shall immediately place such funds in Broker's Trust Account which is further identified below.

All fees collected by Broker shall not be deemed "*earned*" until and unless; (1) the services (specified below) are properly performed by Broker, (2) such services are performed within the stated timeframes as designated below, and (3) until such time as a verified accounting is made to Principal.

**REFUNDS/CANCELLATION:** The advance fee collected by Broker is refundable at any time upon written request by Principal to cancel this agreement to the extent such fees are not earned. Such written request to Cancel this agreement and seek a refund shall be made to Broker's address listed on the bottom of this Advance Fee Agreement. Broker is entitled to retain any earned fees designated below for services actually performed or rendered on your behalf which were properly performed within the stated timeframes. **ACCORDINGLY, THIS AGREEMENT MAY BE CANCELLED OR RESCINDED BY YOU AT ANY TIME BY WRITTEN REQUEST AS SET FORTH HEREIN.**

In addition, where Broker fails to perform any or all of the specified services as set forth below, or fails to perform such services within the required timeframes, Principal is entitled to a full refund of any and all fees not earned by Broker. Such refund shall be made by Broker to Principal within 5 business days to Principals address on file with Broker.

### **MANDATORY DISCLOSURES**

**NOTICE: The amount or rate of fees specified in this agreement for services is not fixed by California law. Fees are set by each broker individually and are subject to negotiation between the client (Principal) and the broker.**

Principal Initial \_\_\_\_\_ Principal Initial \_\_\_\_\_ 2

**NOTICE:** *California Civil Code Section 2945.5* prohibits any real estate licensee from claiming, demanding, charging, collecting, or receiving any compensation from a person whose residence is in foreclosure until all of the promised services have been fully performed and completed. **DO NOT SIGN THIS AGREEMENT IF A NOTICE OF DEFAULT HAS BEEN RECORDED AGAINST THE PROPERTY.**

\_\_\_\_\_  
Initials      Initials

**CLIENT (PRINCIPAL/PROPERTY OWNER) CERTIFIES THAT A NOTICE OF DEFAULT HAS NOT BEEN RECORDED AGAINST THE PROPERTY,**

\_\_\_\_\_  
Initials      Initials

### **III. Client Trust Account**

Broker's Trust Account is Identified as:

U.S. Bank  
750 W. Hamilton Ave.  
Campbell, CA  
Phone: (408) 378-7500  
Account #153461257005

All funds advanced by you, and collected by Broker as set forth above, shall be immediately placed in Broker's Trust Account until such time as Broker may perform the specified loan modification services described in detail below.

Upon full performance of such services as described in **Section IV** below, and following the tendering of a proper verified accounting to Principal as required by California Business and Professions Code Section 10146, Broker shall be entitled to withdraw funds in the amount set forth below for the service(s) actually performed. In that event, the designated fee relating to the specified service shall be deemed earned.

Broker shall make a verified accounting to Principal at the end of each calendar quarter and at the completion of the contract. In the event Broker does not perform each of the Services listed below, Broker shall refund to you any and all amounts not earned by Broker.

Principal Initial \_\_\_\_\_ Principal Initial \_\_\_\_\_ 3

**IV. Services to be Performed / Earned Fees / Completion Dates**

<b>Service to be Performed*</b>	<b>Estimated Fee for Service (Earned upon Full Completion and Verified Accounting)</b>	<b>Service Completion Deadline</b>
(1) Initial Client Consultation / Discussion of services / Signing of Advance Fee Agreement / Open File	No Charge	Execution of Contract triggers " <i>start date</i> "  <b>Broker Insert Start Date</b>
(2) Send Document Request to Principal / Authorization to Represent	\$50.00	To be completed by:  <b>Broker Insert Completion Date</b>  (No later than 7 days after " <i>start date</i> ")
(3) Receive Documents from Principal. Copy, Assemble and Review/Analyze	\$245.00	To be completed by:  <b>Broker Insert Completion Date</b>  (No later than 14 days after " <i>start date</i> ")
(4) Create Client Financial Analysis (Debt to Income / Budget / Profit and Loss Statement)	\$395.00	To be completed by:  <b>Broker Insert Completion Date</b>  (No later than 14 days after " <i>start date</i> ")
(5) Create Proposed Loan Modification for Lender Review	\$150.00	To be completed by:  <b>Broker Insert Completion Date</b>  (No later than 14 days after " <i>start date</i> ")

Principal Initial \_\_\_\_\_ Principal Initial \_\_\_\_\_ 4

(6) Advise on Hardship Letter, Collect & Review	\$165.00	To be completed by:  <hr/> <b>Broker Insert Completion Date</b>  (No later than 20 days after "start date")
(7) Research Property Comps & Prepare and Submit Broker Opinion of Value (BPO) / Submit Foreclosure Cost / Benefit Analysis	\$425.00	To be completed by:  <hr/> <b>Broker Insert Completion Date</b>  (No later than 20 days after "start date")
(8) Initiate Contact with Lender(s); Fax/Mail Representation Letter & Obtain Appropriate Lender Documentation; Create Lender Contact /Log Sheet	\$275.00	To be completed by:  <hr/> <b>Broker Insert Completion Date</b>  (No later than 30 days after "start date")
(9) Pursue Ongoing Negotiation and Communications with Lender(s) and Principal as needed in an attempt to secure loan modification(s).	\$650.00	To be completed by:  <hr/> <b>Broker Insert Completion Date</b>  (No later than 120 days after "start date")
(10) Coordinate & Receive Final Loan Modification Documents from Lender(s). Review for accuracy and submit to Principal for Signature.	\$150.00	To be completed by:  <hr/> <b>Broker Insert Completion Date</b>  (No later than 120 days after "start date")

Principal Initial \_\_\_\_\_ Principal Initial \_\_\_\_\_ 5

(11) Successful Transaction Fee (As discussed in Section VI below).	\$995.00	To be completed by:  <hr/> <b>Broker Insert Completion Date</b>  (No later than 120 days after "start date")
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**Total Advance Fee Requested: \$3,500**

NOTE: All letters include postage, assembly time and appropriate cover letters. All document scanning and filing is included. All phone calls include hold time, negotiation-time and log-sheet entry time. Fax preparation fees and fax cover-sheet time is also included as necessary.

#### **V. Refund / Right to Cancel**

As discussed above, Principal may request, at any time, return of any and all unused/unearned funds at any time by making a written request to Broker at the address listed on this Advance Fee Agreement. Broker shall immediately return all unearned funds to Principal within 5 business days. This agreement may be cancelled or rescinded at any time as described above.

#### **VI. Successful Transaction Closing Fee**

Principal agrees that in the event Broker is successful in obtaining any modification to the existing note(s) for any loan(s) on behalf of Principal, including the 1<sup>st</sup> mortgage, 2<sup>nd</sup> mortgage and/or the 3<sup>rd</sup> mortgage, in a manner that allows Principal to keep their home and avoid foreclosure (whether or not such modification includes a principal balance reduction and/or terms and conditions otherwise acceptable to Principal), Broker shall be entitled to a "*successful transaction closing fee*" in the amount of \$995.00 (NINE HUNDRED AND NINETY FIVE DOLLARS) and such fee is thereby earned by Broker.

By executing the agreement below, Principal hereby agrees that Broker has earned such fee at the time Broker Secures the appropriate loan modification as described in this section. **IN THE EVENT BROKER IS NOT SUCCESSFUL IN OBTAINING A LOAN MODIFICATION(S) THAT ALLOWS PRINCIPAL TO AVOID FORECLOSURE, BROKER RELEASES PRINCIPAL FROM ANY OBLIGATION TO PAY *THE SUCCESSFUL TRANSACTION CLOSING FEE* UNDER THIS SECTION AND SUCH AMOUNT SHALL BE RETURNED TO CLIENT WITH THE FINAL ACCOUNTING.**

#### **VII. Parties Agree to Cooperate / Timing**

Principal and Broker both understand and agree that a successful loan modification requires the cooperation and communication of both parties. Both parties agree to use

Principal Initial \_\_\_\_\_ Principal Initial \_\_\_\_\_ 6

their best efforts in accomplishing the objectives of the representation. Principal agrees to provide accurate information at all times to broker.

Principal also agrees to notify Broker of any receipt of Notice of Default within 24 hours of Principal's receipt of same.

Time is of the essence with respect to the performance of this agreement. Principal agrees to respond to all Broker inquiries and provide all requested information within 48 hours of receiving a request by Broker.

#### **VIII. No Guarantees, Promises or Warranties**

Principal understands and agrees that there are no guarantees that any lender will agree to any loan modification or that they will agree on a modification on terms and conditions acceptable to Principal. In addition, Broker makes no guarantee that Broker will cure any default and/or that the Principle will avoid foreclosure.

#### **IX. Arbitration**

In the event of any dispute arising under this agreement, each party agrees to have the case heard by a neutral arbitrator utilizing the American Arbitration Association's Commercial Arbitration Rules. Each party shall bear its own costs in such action and the decision of the Arbitrator shall be binding. Reasonable Discovery shall be permitted and Venue shall be in \_\_\_\_\_ County (*Broker insert County*) California.

#### **X. Party Signatures / Acknowledgement**

By signing below, each party indicates and agrees that they agree to each and every term of this agreement. If any portion of this contract is deemed unenforceable all other non-offending terms shall survive. This contract shall be interpreted according to the laws of the State of California. This agreement shall be effective upon execution by Principal and Broker ("*Start Date*").

*Hereby Read, Understood and Agreed:*

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Broker

\_\_\_\_\_  
Date

California Department of Real Estate – Real Estate Broker  
License #01857664

Principal Initial \_\_\_\_\_ Principal Initial \_\_\_\_\_ 7

700 Gale Drive, Suite 260-B, Campbell, CA 95008  
Phone: (877) 877-4245 Fax: (408) 379-4276

**Client ("Principal") Trust Account Adjustment Notification**

This Trust Account Adjustment Notification ("verified accounting") is being provided in order to; (a) provide you with an accounting of the advance funds Broker has collected; (b) provide you with an accounting of amounts expended for services rendered within stated deadlines and; (c) to provide you with an accounting of funds remaining in Broker's Trust account.

Principal(s) Name(s): \_\_\_\_\_

Today's Date: \_\_\_\_\_

Broker's Trust Account is identified as:

U.S. Bank  
750 W. Hamilton Ave.  
Campbell, CA  
Phone: (408) 378-7500  
Account #153461257005

**Client's First Mortgage**

Lender Name: \_\_\_\_\_

Lender Address: \_\_\_\_\_

Loan Account#: \_\_\_\_\_

Date Package Submitted to Lender: \_\_\_\_\_

**Client's Second Mortgage**

Lender Name: \_\_\_\_\_

Lender Address: \_\_\_\_\_

Loan Account#: \_\_\_\_\_

Date Package Submitted to Lender: \_\_\_\_\_

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Amount of Advance Fee Originally Deposited with Broker: \$ \_\_\_\_\_

Date Original Advance Fee Deposited with Broker: \_\_\_\_\_

700 Gale Drive, Suite 260-B, Campbell, CA 95008  
Phone: (877) 877-4245 Fax: (408) 379-4276

**Verified Accounting for Services Rendered**

This is a Verified Accounting for Services Rendered from \_\_\_\_\_ to \_\_\_\_\_.

Description of Service Rendered:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Your account has been debited pursuant to the Broker-Client Advance Fee Agreement signed on:

\_\_\_\_\_.

Debit Amount: \_\_\_\_\_. Total debits to date are: \_\_\_\_\_.

Your remaining balance is: \_\_\_\_\_.

**BROKER IS AUTHORIZED TO TRANSFER THESE FUNDS OUT OF YOUR CLIENT TRUST ACCOUNT WITHIN 5 BUSINESS DAYS OF YOUR RECEIPT OF THIS LETTER. IF YOU HAVE ANY QUESTIONS, CONCERNS, OR OBJECTIONS, PLEASE MAKE THEM KNOWN TO BROKER AS SOON AS POSSIBLE BY CONTACTING US AT:**

**(877) 877-4245**

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

\_\_\_\_\_  
(Date and Place)

\_\_\_\_\_  
Broker

California Department of Real Estate License #01857664

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Phone: (877) 877-4245 Fax: (408) 379-4276